IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

Case No.: 77-1719

JAMES THOMAS NOLAN,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF FLORIDA, FOURTH DISTRICT

FRED HADDAD of
SANDSTROM & HADDAD
429 South Andrews Avenue
Fort Lauderdale, Florida

Counsel for Petitioner

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

Case No:

JAMES THOMAS NOLAN,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEALS OF FLORIDA, FOURTH DISTRICT

The Petitioner, JAMES THOMAS NOLAN, moves that a Writ of Certiorari issue to review the judgment of the District Court of Appeals of Florida, affirming the felony Orders, judgment and sentence of the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida.

OPINION BELOW

The decision of the District Court of Appeals affirming the Trial Court is a per curiam order issued without opinion and appears at [A. 1] of Petitioner's Appendix to this Petition.

JURISDICTION

The judgment of the District Coun of Appeals of Florida, Fourth District, was rendered on 26 July 1977 [A. 2], and on 2 September 1977, that Court denied Petitioner's Petition for Rehearing [A. 3]. Thereafter, on or about 16 September 1977, a Petition for Writ of Certiorari was filed with the Supreme Court of the State of Florida [A. 4], the Petition was denied on 8 December 1977. A Petition for Rehearing was made to the Florida Supreme Court on or about 15 December 1977 [A. 5], and said Petition was denied by the Court on 21 February 1978 [A. 6] thusly leaving the decision of the District Court of Appeals,Fourth District, the highest Court in which a decision could be had. Pursuant to Florida Appellate Rules applicable at the time of filing of the various Petitions after the Appellate Court decision of 26 July 1977, caused that decision to be automatically stayed. The jurisdiction of this Court is invoked under Title 28 U.S.C. § 1257 (3).

QUESTION PRESENTED

1. WHETHER FLORIDA STATUTE 838.021 "CORRUPTION BY THREAT AGAINST PUBLIC OFFICIAL" VIOLATES THE FREE SPEECH CLAUSE OF THE UNITED STATES CONSTITUTION AS WELL AS CREATING A SPECIAL CLASS IN DEROGATION OF THE DUE PROCESS AND PROTECTION CLAUSES MADE BINDING UPON THE STATES.

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT ONE

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT FOURTEEN

Section 1. All persons born or naturalized in the United States, and subjects to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty,or property without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

FLORIDA STATUTE INVOLVED

838.021 Corruption By Threat Against Public Servant

(1) Whoever unlawfully harms or threatens unlawful harm to any public servant, to his immediate family, or to any other person with whose welfare he is interested, with the intent or purpose:

(a) To influence the performance of any act or omission which the person believes to be, or the public servant represents as

being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(b) To cause or induce him to use or exert, or procure the use or exertion of, any influence upon or with any other public servant regarding any act or omission which the person believes to be, or the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that he had assumed office, that the matter was properly pending before him or might by law properly be brought before him, that he possessed jurisdiction over the matter,or that his official action was necessary to achieve the person's purpose.

(3) (a) Whoever unlawfully harms any public servant or any other person with whose welfare he is interested shall be guilty of a felony of the second degree, punishable as provided in §775.082, §775.083, or §775.084.

(b) Whoever threatens unlawful harm to any public servant or to any other person with whose welfare he is interested shall be guilty of a felony of the third degree, punishable as provided in §775.082, §775.083, or §775.084.

STATEMENT OF THE CASE

The Petitioner was arrested on 14 October 1975, at 11:57 P.M., in Hollywood, Florida, by one Timothy Hunter, a policeman of that city for the offense of driving while under the influence of alcoholic beverages [A. 7]. Thereafter, an Information was filed by the State's Attorney of the Seventeenth Judicial Circuit, in and for Broward County, Florida [A. 8], charging that Petition, on 14 October 1975,

> "did unlawfully threaten unlawful harm to a public servant, to-wit: Timothy Hunter, a duly authorized police officer and public emloyee of the City of Hollywood, Florida, by threatening to kill him if he arrested the said Defendant, James

> Thomas Nolan, with the intent or purpose to influence the performance of a public duty of the said Timothy Hunter, to-wit: the arrest and detention of the said James Thomas Nolan for the offense of Driving While Intoxicated, contrary to F. S. 838.021."

The Information did not allege, nor did the proofs establish that Petitioner did any more than verbally accost the arresting policeman; there were no allegations or offers of proof that Petitioner did any act to, or had the present means whereby he could carry those threats to fruition. The case proceeded upon mere speech. It was uncontroverted that Petitioner was intoxicated.

The Petitioner filed a "Motion to Dismiss" before the Trial Court [A. 9] attacking not only the vagueness of the Statute but also its unconstitutionality as being in derogation of the First Amendment to the Constitution of the United States. After hearing, the Motion was denied by the Court [A. 10].

The case proceeded to jury trial, Petitioner was convicted and sentenced to the custody of the Division of Correction of the State of Florida for a term of five (5) years. The reviewing State Courts upheld the Orders, judgment and sentence.

REASONS FOR GRANTING THE WRIT

1. Florida Statute 838.021 either facially or as applied to Petitioner is such as to be in derogation of the safeguards afforded the Petitioner by virtue of the Constitution of the United States, Amendments One and Fourteen.

Florida Statute 838.021 is a Subchapter of Chapter 838 of the Florida Statutes which bear the general heading "Bribery; Misuse of Public Office", and denounce inter alia the bribery of various officials within the State government and its subdivisions, and from its very reading addresses "crimes" relative to "political" officials.

The Florida Statutes have various statutes which embrace crimes wherein the victim is a policeman, or the policeman's duties are hindered

by a citizen of the State of Florida, to-wit:

F.S. 843.01 - "Resisting Arrest With Violence"
F.S. 843.02 - "Resisting Arrest Without Violence"

as well as the other offenses enumerated in Florida Statutes Chapter 843, entitled "Obstructing Justice".

Florida Statute 838.021 is a Statute with its derivation in 1975, and it does not appear that any cases have been decided thereunder. Under the peculiarities of the case sub judice, the Petitioner would allege that its being applied in a criminal prosecution against him is unconstitutional.

The Petitioner, while drunk, threatened to kill a policeman after his actual arrest; only mere words were spoken and Petitioner did nothing at any time to carry out this threat, nor did he have the ability to do so at the time.

The Court has long recognized the right of the citizens of this country to exercise their guaranteed free speech, no matter how offensive the same may be to others [See, i.e., *Spence v. Washington,* 418 U.S. 405, 94 S.Ct. 2727, 41 L.Ed.2d 842 (1974); *Cohen v. California,* 91 S.Ct. 1780 (1971); *Street v. New York,* 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969); *Kingsley International Pictures Corp. v. Regents of University of State of New York,* 360 U.S. 684, 79 S.Ct. 1362, 3 L.Ed.2d 1512 (1959); *Baumgartner v. United States,* 322 U.S. 665, 64 S.Ct. 1240, 88 L.Ed. 1525 (1944); *Terminiello v. City of Chicago,* 337 U.S.1, 69 S.Ct.894, 93 L.Ed.2d 1131 (1949)], subject, of course, to protecting the public from imminent danger such as riot [See: *Carroll v. President,* 393 U.S. 175, 89 S.Ct. 347, 21 L.Ed.2d 325 (1969); *Blount v. Rizz,* 400 U.S. 410, 91 S.Ct. 423, 27 L.Ed.2d 498 (1971); *Bates v. City of Little Rock,* 361 U.S. 516, 80 S.Ct. 412, 4 L.Ed.2d 480 (1960); See also: *Healy v. James,* 408 U.S. 169, 92 S.Ct. 2338, 33 L.Ed.2d 266 (1972)].

And this Court has had to confront the situation of irate irresponsible "speech" being directed to agents of law enforcement [See: *Lewis v. City of New Orleans,* 415 U.S. 130, 94 S.Ct. 970, 39 L.Ed.2d 214 (1974); *Garrison v. Louisiana,* 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964); *Rosenblatt v. Baer,* 383 U.S. 75, 86S.Ct. 669, 15 L.Ed.2d 59 (1966); cf: *Papesh v. Board of Curators of University of Missouri,* 410 U.S. 667, 93 S.Ct. 1197, 35 L.Ed.2d 618 (1973); *City of Pasco v.*

Dixson, 81 Wash. 2d 512, 503 P.2d 76 (1972).

In this vein, the Court has held that words amounting to nothing more than advocacy of illegal action [i.e., "off the pigs"] at some indefinite future time does not come within the narrowly limited classes of speech which the State may punish [See: *Hess v. Indiana,* 414 U.S. 105, 95 S.Ct. 326, 38 L.Ed.2d 303 (1973)]. Clearly, the idle remarks of Petitioner fall within this protected speech.

Even assuming the State has a legitimate interest in protecting its public officials, perhaps including the police, from the intemperate threatening remarks that occur in the normal course of business, the Petitioner would submit, as is existed at common law, mere words are never sufficient. The Florida Statute, as applied in this instance, causes a substantial term of incarceration for the expression of what most persons would feel like expressing at the time of an arrest and the punishing of the naked expression to a policeman cannot pass constitutional muster [See: *Norwell v. City of Shaker Heights,* 414 U.S. 14, 94 S.Ct. 187, 38 L.Ed.2d 170 (1973)], were the same words uttered to a councilman relative to his vote on a zoning matter, the Petitioner would better understand the State's interest [cf: *California v. LaRue,* 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed. 342 (1972); *Goodling v. Wilson,* 405 U.S. 518, 92 S.Ct. 1103, 31 L.Ed.2d 408 (1972); *Tollett v. United States,* 485 F.2d 1087 (5th Cir.1973)].

Petitioner merely expressed, verbally, his immediate reaction to the situation within which he found himself. His statement should not and cannot validly form the basis of the instant conviction, for such falls within the purview of "protected speech" as provided for and guaranteed by the First Amendment. *Street v. New York,* supra; *Norwell v. City of Shaker Heights,* supra. The mere fact that Petitioner's statement could indicate a future disturbance will not destroy the actual, protected and legitimate nature of Petitioner's words to the officer. See: *Brandenburg v. Ohio,* 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969).

Petitioner is cognizant of the fact that the First Amendment does not provide for an absolute protection to every individual to so speak whatever, whenever and wherever he pleases. *Cohen v. California,* 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284, (1971). However, the right to freedom of speech does encompass and protect the right of the public to reasonably express their thoughts, ideas and opinions without fear of reprisal when such speech does not constitute imminent danger. Clearly,

free speech may not be restricted on the mere possibility that some breach of the peace might occur at some future time. *Robinson v. Coopwood,* 292 F.Supp. 926 (D.C. Miss. 1962), affirmed 415 F.2d 1377 (5th Cir. 1968).

Instantly, Petitioner was convicted of an offense by merely uttering words describing a potential future act. Such statements were not "fighting words" or speech constituting an imminent danger. Petitioner's constitutional right to freedom of speech has been violated by the State of Florida, as he has been punished for mere statements that are protected by the First Amendment. See: *Edward v. South Carolina,* 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697 (1963).

CONCLUSION

On the basis of this and for all of the foregoing, the Petition for Writ of Certiorari ought be granted.

Respectfully submitted,

SANDSTROM & HADDAD
Attorneys for Petitioner
429 South Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (305) 467-6767

BY: _____

FRED HADDAD

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Writ of Certiorari has been furnished to the Office of the Attorney General, 225 Pan American Building, West Palm Beach, Florida, this 16 May 1978.

BY: _____

FRED HADDAD

APPENDIX

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1977

JAMES THOMAS NOLAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 76-999

Decision filed July 26, 1977

Appeal from the Circuit Court for Broward County; Robert W. Tyson, Jr., Judge.

Robert T. Adams, Jr., Fort Lauderdale, for appellant.

Robert L. Shevin, Attorney General, Tallahassee, and Paul H. Zacks, Assistant Attorney General, and Benedict P. Kuehne, Legal Intern, West Palm Beach, for appellee.

PER CURIAM.

AFFIRMED.

CROSS, ALDERMAN, and DAUKSCH, JJ., concur.

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

JAMES THOMAS NOLAN

Appellant.

v. CASE NO. 76-999.

STATE OF FLORIDA

Appellee.

September 2, 1977

ORDERED that the petition for rehearing filed August 3, 1977 is hereby denied.

A TRUE COPY

/s/

CLYDE L. HEATH
clerk

cc: Robert T. Adams, Jr., Esq.
Paul H. Zacks, Esq.

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

JAMES THOMAS NOLAN, : PETITION FOR A WRIT OF
CERTIORARI TO THE DISTRICT
Petitioner, : COURT OF APPEAL, FOURTH
DISTRICT
vs. :

STATE OF FLORIDA, :

Respondent. :

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, JAMES THOMAS NOLAN, presents this, his petition for a writ of certiorari and states:

1. Petitioner seeks to review the decision of the District court of Appeal, Fourth District, dated the 26th of July, 1977, and filed in the records of the said District Court on the 26th of July, 1977, in Book 43, Page 346, and the Order denying a Petition for Rehearing filed in the said District Court on September 2, 1977, in Book 44, Page 413.

2. This petition is presented under and pursuant to Article 5, Sections 3 and 4, of the Florida Constitution, and Rule 4.5c of the Florida Appellate Rules.

3. Accompanying this Petition are conformed copies of so much of the record of the proceedings as is necessary to show jurisdiction including the decision the Petitioner seeks to have reviewed and a supporting brief.

4. The following are the facts of the case:

A. The Petitioner was charged by way of an Information and an Amended Information charging an alleged violation of Florida Statute 838.021 (copies attached as Exhibits 1 and 2, respectively).

B. That Motions to Dismiss the Information

and Amended Information were filed attacking among other things, the constitutionality of the Statute (copies of said Motions attached as Exhibits 3 and 4, respectively), the Defendant standing mute to the alleged Amended Information.

C. That the Trial Court specifically ruled on the constitutionality of the Statute and other grounds in denying the said Motions to Dismiss without a written order, but said denial is reflected in the Minutes, Book 315, Page 95, dated February 4, 1976, (copies attached as Exhibit 5).

D. That Florida Rule of Criminal Procedure 3.400 specifically states what materials may be taken to a jury room during deliberation and there was a direct violation of this Rule by a juror having with him during deliberation a magazine with the lead article entitled " 'Revolving Door' Justice - Why Criminals Go Free". That a copy of the magazine was accepted as a Court Exhibit and made part of the Record on Appeal, said magazine being U.S. News and World Report, May 10,1976, and copies of portions of that magazine with portions of the articles contained therein are attached hereto as Exhibit 6. The Trial Court denied a Motion for a Mistrial and did not conduct a hearing regarding prejudice. (See Exhibit 7, which is portions of the Transcript, pages 388 through 391.)

E. That Florida Statue 838.021 is a Statute requiring a "specific "intent and that even though written requested jury instructions were presented the Trial Court regarding specific intent and repeated requests were made for the Statute to be read to the jury, the Trial Court denied the instructions and did not read the Statute. (See Exhibits 8, 9 and 10 which are copies of written requested jury instructions 1 through 3 and portions of the transcript of testimony, pages 343 through 345, and pages 384 and 385, respectively.) The Petitioner also relied upon Rule 3.390 of the Florida Rules of Criminal Procedure regarding jury instructions, but acknowledged that the penalty need not be given.

F. That a Motion to Impose Sanctions was filed and denied when a State witness did not respond to a Discovery Deposition Subpoena (See attached Exhibit 11), said Motion to Impose Sanctions being part of the record on

appeal (R 12).

G. That a Motion for Bill of Particulars was filed (Exhibit 12) and answered (Exhibit 13) with the Petitioner clearly notifying the State and the Court prior to jeopardy that they were relying on the answer. (See Exhibit 14, which is in the transcript, pages 16 and 17.)

H. That the Petitioner was not allowed to call a defense witness even though the witness was available for interview by the prosecution and Rule 3.220(F) of the Florida Rules of Criminal Procedure was complied with. (See Exhibit 15, which is in the transcript, pages 186 through 188.)

I. That the Trial Court denied a Motion for Judgment of Acquittal which cited as one of the grounds a material variance in that the Information and Bill of Particulars supplied allege that the Petitioner was charged with "driving while *intoxicated*" but the proof was only that he was charged with "driving while under the influence". This distinction is of paramount importance because if there were proof of intoxication, intoxication could have been a defense to a "specific intent" crime. (See Exhibit 16, which was a defense Exhibit at the trial and is part of the Record on Appeal.)

J. That during final argument the prosecutor committed fundamental error by improperly arguing:

1. That he was going to tell about statements the Petitioner made but were not heard by the jury because they were blocked by objections of defense counsel, reiterating that he was going to comment on those statements and he knew that there would be grounds for a mistrial or a motion for a mistrial (See Exhibit 17, transcript Page 379).

2. That the Petitioner had sexual relations with his brothers (See Exhibit 18, transcript Page 354).

5. On the foregoing facts the Court was presented with the following points of law:

A. Whether the violation of Rule 3.400 by unauthorized and prejudicial material in the jury room was reversible error; warranted at least a full hearing as to its prejudicial effect and whose burden it becomes to show prejudice or non-prejudice when there is a violation of a Rule of Criminal Procedure.

B. Whether there was reversible error and denial of equal protection for the Petitioner and the State when the Petitioner (Defendant) complied with Rule 3.220 of the Florida Rules of Criminal Procedure and the State did not.

C. Whether the Court erred in denying written requested jury instructions and in failing to read the Statute allegedly violated.

D. Whether the Trial Court erred in denying a Motion for Judgment of Acquittal and in failing to recognize the material variance between "Driving while under the influence" and"Driving while intoxicated".

E. Whether the Court erred in failure to uphold strict standards of conduct for a prosecutor's final argument.

6. The affirmance of the Trial Court by the Fourth District Court of Appeal is in conflict with decisions of the Supreme Court of Florida and the Second District Court of Appeal in the following respects.

A. The Supreme Court, even prior to the Rules of Criminal Procedure, reversed for the allowing of a dictionary in the jury room without informing defense counsel. (See *Smith v. State,* 95 So.2d 525 (Florida, 1957).

B. Rule 3.400 itself clearly delineates what materials may be authorized to be taken into the jury room. Rule 3.220 clearly sets forth the rules of discovery regarding the continuing duty to disclose and sanctions available for non-compliance. The Supreme Court of Florida recently in *Cumbie v. State,* 345 So.2d 1061 (Fla., 1977) reversed and reiterated that violation of the Rules of Criminal Procedure are error unless an inquiry is conducted by the Trial Court regarding the surrounding circumstances under the guidelines of another

Supreme Court decision, *Richardson v. State,* 246 So.2d 771 (Fla., 1971), which is also in conflict with the Fourth District.

C. The District Court in failing to recognize the difference between "Driving while intoxicated" and "Driving while under the influence" is in conflict with the Supreme Court in the case of *Ingram v. Pettit,* 340 So.2d 922.

D. The Fourth District Court is also in conflict with the Second District regarding guidelines for improper final argument by a prosecuting attorney as set forth in *Chavez v. State,* 215 So.2d 750, and the principles of the Supreme Court as shown in *Fulton v. State,* 335 So. 2d 280 (1976).

7. The Petitioner would further contend that a constitutional question has been preserved by filing the Motion to Dismiss in the Trial Court and its being specifically denied where the constitutionality of the Statute involved was questioned as to vagueness and an individual's rights under the First Amendment.

WHEREFORE Petitioner requests this Court grant a Writ of Certiorari and enter its Order quashing the decision and Order of the Fourth District Court of Appeal, affirming the decisions of the Supreme Court of Florida and the Second District Court of Appeal and further to rule upon the constitutionality of the new Statute in question.

Respectfully submitted,

(signed)

ROBERT T. ADAMS, JR.
Attorney for Petitioner
P. O. Box 981
103 South Madison
Marianna, Florida 32446
Telephone: 904-526-3796

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Petition for a Writ of Certiorari were served upon ROBERT L. SHEVIN, ESQUIRE, Attorney General, State of Florida, Tallahassee, Florida, and the Clerk of the District Court of Appeal, Fourth District, West Palm Beach, Florida, by mail delivery this 16 day of September, 1977.

(signed)

ROBERT T. ADAMS, JR.

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 52,438

FOURTH DISTRICT COURT OF APPEAL
CASE NO. 76-999

JAMES THOMAS NOLAN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

PETITION FOR RE-HEARING

COMES NOW the Petitioner and petitions this Honorable Court for a rehearing in the above cause and as grounds therefor would respectfully show:

1. That an Order dated December 8, 1977, was entered by this Honorable Court denying Certiorari in the above cause.

2. That the Petition for Writ of Certiorari was timely filed, together with the Brief in support of the Petition.

3. That Rule 3.14 of the Appellate Rules provides for Petitions for Rehearing within fifteen days of the filing of the decision or Order of the Court so that this Petition is timely filed.

4. The Petitioner respectfully submits that by omission or unintended oversight, the Court erred in denying the Petition for Writ of Certiorari in that this Honorable Court should exercise its jurisdiction pursuant to Rule 4.5(c) by reason of conflicting decisions of both this Honorable Court (Supreme Court) and other District Courts of Apeal, particularly as to the following matters:

A. Violation of Rule 3.400 of the Florida Rules of Criminal Procedure and the "full inquiry" required as set forth in *Cumbie v. State,* 345 So.2d 1061 (Fla. S.Ct., 1977).

B. That differentiation between "driving while under the influence" and "driving while intoxicated" as enunciated in *Ingram v. Pettit,* 340 So. 2d 922 (Fla. S.Ct., 1976) was a material allegation in view of the Information (charging document) alleging "driving while intoxicated". The matter was also properly before this Honorable Court as part of the Record as shown in Exhibits 1, 2 and 16 of the Brief.

C. Improper final argument by the Prosecuting Attorney and the Trial Court's duty as reflected in *Chavez v. State,* 215 So.2d 750 (2 DCA, 1962) and *Pait v. State,* 112 So.2d, 380 (Fla. S.Ct., 1959).

WHEREFORE the Petitioner respectfully petitions this Honorable Court for a Rehearing.

ROBERT T. ADAMS, JR.
Attorney for Petitioner
P. O. Box 981
Marianna, Florida 32446
904-526-3775

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition for Rehearing was furnished by mail to ROBERT L. SHEVIN, ESQUIRE, Attorney General, State of Florida, Tallahassee, Florida; PAUL H. ZACKS, ESQUIRE, Assistant Attorney General, 225 Pan American Building, West Palm Beach, Florida; CLYDE HEATH, Clerk, Fourth District Court of Appeal, West Palm Beach, Florida; and MARY ANDERSON, Deputy Clerk, Circuit Court, Broward County Courthouse, Fort Lauderdale, Florida, this 15th day of December, 1977.

ROBERT T. ADAMS, JR.

IN THE SUPREME COURT OF FLORIDA

TUESDAY, FEBRUARY 21, 1978

JAMES THOMAS NOLAN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

CASE NO. 52,438
DCA CASE NO. 76-999

On consideration of the petition for rehearing filed by attorney for petitioner,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

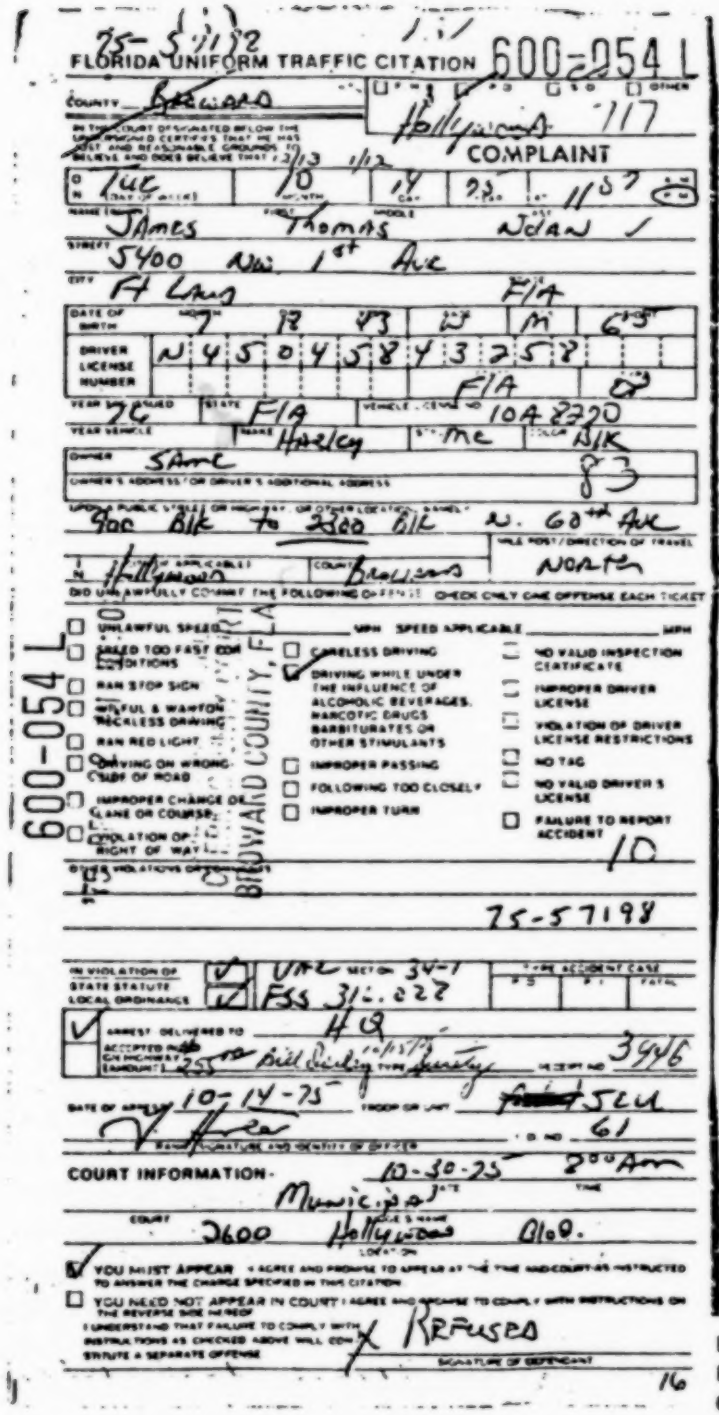
A True Copy
TEST:

Sid J. White
Clerk Supreme Court

By: /s/Dublin Causseaux
Deputy Clerk

cc: Hon. Clyde L. Heath, Clerk
Hon. Robert E. Lockwood, Clerk
Hon. Robert W. Tyson, Jr., Judge

Robert T. Adams, Jr., Esquire
Paul H. Zacks, Esquire


FLORIDA UNIFORM TRAFFIC CITATION 600-054 L

COMPLAINT

600-054 L

75-57198

Def Ex. No. 1
Filed May 3 1976
CLYDE L. HEATH,
Clerk
By /s/ Carol Hanna

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

THE STATE OF FLORIDA	AMENDED INFORMATION FOR
vs.	
JAMES THOMAS NOLAN	CORRUPTION BY THREAT AGAINST A PUBLIC SERVANT

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

PHILIP S. SHAILER, State Attorney of the Seventeenth Judical Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, charges that

JAMES THOMAS NOLAN

on the 14th day of October ,A.D. 1975, in the County and State aforesaid,did unlawfully threaten unlawful harm to a public servant, to-wit: Timothy Hunter, a duly authorized police officer and public emloyee ofthe City of Hollywood, Florida, by threatening to kill him if he arrested the said Defendant, James Thomas Nolan, with the intent or purpose to influence the performance of a public duty of the said Timothy Hunter, to-wit: the arrest and detention of the said James Thomas Nolan for the offense of Driving While Intoxicated, contrary to F.S. 838.021,

LCR/be

COUNTY OF BROWARD
STATE OF FLORIDA

FILED FOR RECORD
CLERK, CIRCUIT COURT
BROWARD COUNTY, FLA.

Personally appeared before me, PHILIP S. Shailer, State Attorney ofthe Seventeenth Judicial Circuit of Florida, as Prosecuting Attorney for the State of Florida in the County of Broward, who being first duly sworn, says that the allegations as set forth in the foregoing Information are based upon facts that have been sworn to as true and which, if true, would constitute the offense therein charged; and that he has instituted this prosecution in good faith.

/s/ Philip S. Shailer

State Attorney, 17th Judicial Circuit of Florida

Sworn to and subscribed before me this 10th day of November, A.D., 1975.

CLYDE L. HEATH
Clerk of the Circuit Court of the 17th Judicial
Circuit in and for Broward County, Florida
By /s/ C V Lang
Deputy Clerk

Jan 13 1976

To the within Information, Defendant stood mute in open Court and a plea of not guilty was entered by the court.

CLYDE L HEATH
Clerk of the Circuit Court of the 17th Judicial
Circuit in and for Broward County, Florida

By /s/ Carol Hanna
Deputy Clerk

Case No. 75-4229CF

IN THE
CIRCUIT COURT
Seventeenth Judicial Circuit of Florida
In and For Broward County
STATE OF FLORIDA

THE STATE OF FLORIDA
vs.
JAMES THOMAS NOLAN

Information for
CORRUPTION BY THREAT AGAINST
A PUBLIC SERVANT

Presented by State Attorney and Filed

Nov 10 1975

CLYDE L. HEATH
Clerk of the Circuit Court

PHILIP S. SHAILER
State Attorney

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 75-4229CF Tyson

STATE OF FLORIDA, :

Plaintiff. :

vs. : MOTION TO DISMISS

JAMES T. NOLAN, :

Defendant :

:

COMES NOW the Defendant by and through his undersigned attorney and respectfully moves this Honorable Court to dismiss and quash the arrest, affidavit, warrant or capias and the Amended Information in the above cause and as grounds therefore would show:

1. That the Amended Information fails to set forth any offense under the Laws of the State of Florida.

2. That the Amended Information is sovague, indistinct and indefinite as to hinder or embarrass the Defendant in the preparation of his defense and might cause him to be twice put in jeopardy for the same alleged act.

3. That the Affidavit and Amended Information fail to set forth and allege essential and ultimate facts.

4. That the Florida Rules of Criminal Procedure were not complied with regarding committing magistrates or preliminary hearings.

5. That the Statute is unconstitutionally vague.

6. That the Statute is unconstitutional in that it is in violation of the First Amendment of the Constitution of the United States.

7. That the Amended Information was filed without leave of Court and in violation of the Florida Rules of Criminal

Procedure, and contrary to the case law appertaining.
WHEREFORE the Defendant respectfully moves this Honorable Court to dismiss and quash the arrest, affidavit, warrant or capias and the Amended Information in the above cause.

/s/ ROBERT T. ADAMS, JR.
Attorney for the Defendant
1040 Bayview Drive
Fort Lauderdale, Florida 33304
565-4858

I HEREBY CERTIFY that a copy of the foregoing Motion to Dismiss was furnished the State Attorney's Office, Broward County Courthouse, Fort Lauderdale, Florida, by mail delivery, this 13 day of January, 1976.

/s/
ROBERT T. ADAMS, JR.

February 4, 1976

STATE OF FLORIDA
VS
JAMES THOMAS NOLAN

CASE NO. 75-4229CF
CORRUPTION BY THREAT AGAINST A PUBLIC SERVANT

This case being called for Hearing on Defense Motion to Dismiss. The defendant was not present in open Court but was represented by Counsel, The Hon. Robert Adams. The Hon. Lawrence Roberts, Assistant State Attorney represented the State and Connie Miller was the official Court Reporter. After due consideration to statements of respective Counsel, the Court proceeded as follows: It is,

Ordered and Adjudged that the Defense Motion to Dismiss be and the same is hereby Denied.

ROBERT W. TYSON, JR.
Judge